

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

SEPTEMBER 19, 2006

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:49 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Vice-Chairperson
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY ROSE	Sr. Zoning Specialist

OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEVEN RICE

The transcript constitutes the minutes from the Special Public Meeting held on September 19, 2006.

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1 P R O C E E D I N G S

2 9:49 a.m.

3 CHAIRMAN GRIFFIS: Let me call to order
4 the morning session of the Board of Zoning Adjustments
5 of the District of Columbia on September 19th, 2006.
6 My name is Geoff Griffis, Chairperson. Joining me
7 today is the Vice Chair, Ms. Miller and Mr. Etherly.

8 Representing the Zoning Commission on a
9 case decision this morning is Mr. Hood, and of course,
10 representing the National Capital Planning Commission,
11 with us is Mr. Mann. Copies of today's hearing agenda
12 are available for you. They're located where you
13 entered into the hearing room.

14 I am going to expedite my openings on this
15 special public meeting, so we can make up a little bit
16 of time. I appreciate everyone's patience with us, as
17 we're a few minutes short of starting on time.

18 But it should be noted that all
19 proceedings before the Board are recorded. Special
20 public meetings, public hearings, all proceedings. So
21 attendant to that, I'd ask that you would please turn
22 off cell phones and beepers at this time, so we don't
23 have a disruption of the transmission of our
24 proceedings.

25 There are two important ways that of

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1 course we are recorded. The court reporting is
2 sitting to m right on the floor. He's making the
3 official transcript. We're also being broadcast live
4 in the Office of Zoning's website.

5 Attendant to that and well, attendant to
6 our proceedings this morning, let me just say I'm
7 going to adjust our schedule for the special public
8 meeting and call the second case of the morning, the
9 Modification for Approved Plans, Application 17475,
10 and then move on to the Application 17501, as we will
11 have a change of people participating in that
12 decision.

13 With that, let me say a very good morning
14 to Ms. Bailey and also Mr. Moy. If wouldn't mind
15 calling the case for our decision this morning.

16 MR. MOY: Yes sir. Thank you Mr.
17 Chairman, and good morning Mr. Chairman and members of
18 the Board.

19 CHAIRMAN GRIFFIS: Good morning.

20 MR. MOY: The case that is Modification of
21 Approved Plans to Application No. 17475, is to Metro
22 Properties, Inc., which was formerly known as Jamal's
23 Giant, LLC, pursuant to Section 3129 of the zoning
24 regulations.

25 Now this modification is to the originally

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1 approved application of 17475, which was pursuant to
2 11 DCMR 3103.2 for a variance from the lot occupancy
3 requirements under Section 772, a variance from the
4 residential recreation space requirements under
5 Section 773, a variance from the side yard
6 requirements under Section 775, and pursuant to 11
7 DCMR 3104.1 for a special exception from the
8 requirements, that rooftop elements be placed in one
9 enclosure under Section 411, to allow the construction
10 of a new 297 unit apartment building in the C-2A
11 district, at premises 3460 - 14th Street, N.W., and
12 1439 Newton Street, N.W., in Square 2678, Lot 706, 832
13 and part of Lots 705 and 707.

14 On May 23rd, 2006, the Board completed
15 public testimony, deliberated and voted to approve
16 this application on a vote to 5 to 0 to 0.

17 On August 17th, 2006, the Applicant filed
18 a request for modification of approved plans, pursuant
19 to Section 3129.

20 This filing is identified in your case
21 folder as Exhibit 36. Essentially, very briefly, the
22 areas for modification in the approved plans include
23 the reduction of two parking spaces, the addition of
24 balconies to specific units, which are shown on Sheets
25 A-1.4 and A-1.5, redesigned rooftop structures, and

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1 incorporated more specific landscaping and passive
2 recreational amenities in the courtyards, as shown on
3 Sheets A-1.2 and A-1.3.

4 Finally, on September 12th, 2006, the
5 Office of Planning made a filing on the submission,
6 and it is identified in your case folder as Exhibit
7 37. The Board is to act on the merits of the request
8 for modification of approved plans.

9 MS. GLAZER: Thank you very much, Mr. Moy.

10

11 A very thorough opening and I would tend to agree,
12 from the information provided, it looks like this
13 modification is in accordance with Section 3129 of the
14 regulations.

15 Let me ask if there are any Board members
16 that have clarifying questions or comments on the
17 proposed modification to the already-approved plans.

18 (No response.)

19 MS. GLAZER: Very well. Not noting any
20 detailed questions to be brought forward at this time,
21 I did have some question of the additional balconies,
22 and how they would not increase lot occupancy.

23 But it appears in looking at the drawings
24 and obviously in the statement by their attorney in
25 their submission, that they do not change the approved

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1 lot occupancy. I see that it's an interesting fact to
2 look at. But it doesn't raise any concern for me in
3 terms of going further into a detailed evaluation of
4 it.

5 The other elements, as Mr. Moy has laid
6 out, I think are very clear and understandable, and I
7 would move approval of the request for modification of
8 17475, as shown on the documents submitted and ask for
9 a second.

10 MR. MANN: Second.

11 CHAIRMAN GRIFFIS: Thank you very much,
12 Mr. Mann. I think we all remember very well
13 obviously, and we've reviewed the entire record of
14 this, this is a huge project of -- well, frankly
15 there's some complications in terms of its mixed use,
16 but also in terms of its depth, and how it lays out
17 for residential units.

18 Obviously, there's been some change to the
19 construction of it, but not of the overall, let's say,
20 concept or massing that we had approved for zoning
21 purposes. I think that it's supportable in its very
22 limited adjustments, in terms of going forward on
23 this.

24 Also note that we will make certain that
25 we number the units correctly as we issue this order,

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1 to the total number. I believe it's 297, not that we
2 were making any judgment at all on that typo that went
3 out previously. Any other comments?

4 (No response.)

5 CHAIRMAN GRIFFIS: If there are no further
6 comments, then we do have a motion before us that has
7 been seconded. We'd ask for all in favor to signify
8 by saying aye.

9 (Chorus of ayes.)

10 CHAIRMAN GRIFFIS: And opposed?

11 (No response.)

12 CHAIRMAN GRIFFIS: Abstaining?

13 (No response.)

14 CHAIRMAN GRIFFIS: Excellent. Mr. Moy,
15 why don't we record the vote?

16 MR. MOY: Yes. Staff would record the
17 vote as 5 to 0 to 0 on the motion of the chairman, Mr.
18 Griffis, seconded by Mr. Mann. Also in support of the
19 motion Mr. Etherly, Ms. Miller and Mr. Hood. Summary
20 order, Mr. Chairman?

21 CHAIRMAN GRIFFIS: Yes. I see no reason
22 not to waive our rules and regulations and issue a
23 summary order on this, unless anyone has concerns.
24 Very well. Let's move ahead then and before you call
25 the next case, Mr. Moy, let me just note that Mr.

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1 Turnbull will be joining us as a zoning commissioner
2 participating on this case. Let's say a very good
3 morning to Mr. Hood and welcome him back for our
4 morning public hearings.

5 I also am not on this case, Mr. Moy, to
6 chair the deliberations on this case. So we will
7 reconvene at the hearing after your deliberation is
8 finished.

9 (Whereupon, a short recess was taken.)

10 MS. MILLER: Good morning, Mr. Turnbull.
11 Would you like to read the intro?

12 MR. MOY: Yes, Madam Chair. The second
13 and last case for decision is Application No. 17501 of
14 Cynthia A. Jones, on behalf of Jones and Araque, LLC,
15 pursuant to 11 DCMR 3104.1, for a special exception,
16 to establish a fast food restaurant under Section 733
17 in the C-2A District at premises 605 2nd Street, N.E.
18 That's in Square 753, Lot 94.

19 On July 25th, 2006, the Board completed
20 public testimony, closed the record and scheduled its
21 decision on September 19th, 2006. The Board requested
22 specific additional information from the Applicant,
23 which addressed the elements of the windows on the
24 second floor and the rear exterior lighting, awnings
25 and signage of an appropriate size and scale on the

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1 front elevation.

2 Delivery service concerns, frequency of
3 trash pickups and trash bin enclosure concerns. This
4 was filed by the Applicant, and is identified in your
5 case folders as Exhibit 31. The record was also open
6 to allow comments from DDOT, the Department of
7 Transportation, District Transportation, and this is
8 identified as Exhibit No. 30 in your case folder.

9 Finally, we also have a filing from the
10 ANC, which is identified in your case folders as
11 Exhibit 32. The ANC supplemental letter has three
12 attachments to it.

13 One is the copy of the DDOT report, which
14 has already been filed as Exhibit No. 30. Also
15 attached is a petition, and finally also attached are
16 two letters in opposition.

17 Staff will leave it at that, unless the
18 staff or the Board has further questions, the Board or
19 staff on the merits of the application.

20 MS. MILLER: Thank you, Mr. Moy. Yes, I
21 think we can pick up from there. As my colleagues
22 know, this is an application for a special exception,
23 to establish a fast food restaurant under Section 733
24 in a C-2A district.

25 I think we first should address the

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1 filings that were made, and decide upon accepting them
2 into th record or not. The record was closed at the
3 end of the hearing, except for those documents, as Mr.
4 Moy identified them, which were the DDOT memo and the
5 Applicant's addressing of certain issues that the
6 Board had asked them to address, regarding signage and
7 lighting and trash and delivery issues.

8 Then I want to clarify. I double-checked
9 the transcript. In the ANC's report, I want to note
10 that they said that they were "instructed by the
11 acting chair to review new information in the DDOT
12 report, that the ANC had not had an opportunity to
13 discuss and to report back before September 15th."

14 I just want to clarify that we're giving
15 the ANC the opportunity to address the filings that
16 were to be made by DDOT and the Applicant, that we
17 didn't require them to do so. We always want the
18 opportunity -- since it affects these establishments
19 obviously affect the community, to give the community
20 an opportunity to respond. But they're not required
21 to.

22 In any event, the ANC did respond with a
23 letter, which is a letter report which is identified
24 in our record as Exhibit No. 32, and I would suggest
25 that we certainly accept that, since we invited them

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1 to do that, and they took a vote on the issue that was
2 still really at issue, involving delivery and loading
3 and the memo by DDOT.

4 However, I would like to note that I can't
5 find what the vote is, as reflected on this report.
6 So you know, that gets to the question of great
7 weight. When we don't know what the vote is, we don't
8 "give great weight."

9 I want to just explain what that means.
10 It means that we don't necessarily -- we're not
11 required to address the issues in that report if they
12 don't provide a vote or other key things like that.

13 However, we do pay attention to what the
14 community has stated, as reflected by the ANC. So we
15 are paying attention to this report.

16 Finally, though, I do want to get to the
17 issue of the attachments, because they attach a
18 petition which does not address the specific issue
19 that was addressed by the new information by DDOT and
20 the Applicant, involving delivery and loading issues.

21 The same is true with there are two
22 letters that are by realtors, that opine with respect
23 to the effect on property values. The record was not
24 left open for that issue. So these are more in the
25 nature of a piggybacking, I would say, on the ANC

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1 report.

2 So I would like to hear from my
3 colleagues, but I would suggest that we accept into
4 the record the report of the ANC, but not the
5 attachments.

6 MR. MANN: I agree with your assessment of
7 the situation, and if you're comfortable parsing that
8 out and dividing it that way, I would support that,
9 because you're right. It doesn't address properly
10 their issues that we raised, and it seems to try to
11 circumvent the record being closed.

12 MR. TURNBULL: I would concur, Madam
13 Chair.

14 MS. MILLER: Okay, and I'd also like to
15 say, even in looking at the report, it isn't even
16 clear that the ANC discussed it at the meeting, and it
17 went to that point. The vote was of the ANC to
18 support the alley delivery, as opposed to the curbside
19 parking.

20 So okay. I think it's very easy to
21 separate this and just accept into the record the ANC
22 report. So now I think -- I don't think there are any
23 other preliminary issues on this, and we can go to the
24 merits of the special exception application for the
25 "fast food restaurant" in the C-2A district.

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1 And I say "fast food restaurant" because
2 I think that our regulations are going to be
3 reexamined at some point. But our regulations put the
4 fast food category under "restaurant," and it's a very
5 broad category. It covers anything from a coffee shop
6 to a chain.

7 So what that does, though, is give us the
8 opportunity to look at each establishment on a case-
9 by-case basis, applying the standards that are clearly
10 set forth in Section 733.

11 But I think sometimes these applications
12 can be colored by fears of what neighbors might
13 envision fast food to mean, and often they conjure up
14 a chain image.

15 I think in this case, we're talking more
16 about a mom and pop type of establishment. Okay. So
17 with that being said, I think that what would be most
18 useful is that we go to the standards that we are to
19 use to evaluate whether or not to grant the special
20 exception.

21 They're set forth in regulations at 733,
22 and I think I would like to use the Office of
23 Planning's report as a guide at least to begin with,
24 because they go through each of these elements that
25 need to be met, in order for us to grant the

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1 application.

2 (Pause.)

3 MS. MILLER: That's Exhibit No. 34?

4 MR. MANN: 24.

5 MS. MILLER: 24, sorry. There it is.

6 Okay. 733 says that a fast food restaurant shall be
7 permitted in the C-2A district as a special exception
8 if approved by the BZA under Section 3104, subject to
9 the provisions of this section.

10 3104 is the general special exception
11 regulation, which basically provides that the Board
12 look at this, the impact of the establishment, so that
13 -- to determine that it not have an adverse impact
14 upon the use of neighboring property.

15 But anyway, we're to specifically look at
16 the elements under 733. So 733.2 says "No part of the
17 lot in which the use is located shall be within 25
18 feet of a residence, unless separated therefrom by a
19 street or alley."

20 According to the Office of Planning
21 report, the subject property is approximately 53 feet
22 from the neighboring four-zone district. So that
23 element is met.

24 733.3 according to the Office of Planning
25 is not applicable. It involves whether a lot line

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1 abuts an alley containing a zone district boundary
2 line for a residence district.

3 733.4 states "Any refuse dumpster shall be
4 housed in a three-sided brick enclosure equal in
5 height to the dumpster or six feet high, whichever is
6 greater. The entrance to the enclosure shall include
7 an opaque gate. The entrance shall not face a
8 residence district."

9 Okay. I think this was an issue at the
10 hearing, as well as having been addressed in the
11 papers, and that this element has also been met, that
12 the revised plans -- Applicant did submit revised
13 plans, and they do show a notation that the gate to
14 the trash enclosure would be opaque, and I believe it
15 also meets the other parts regarding its enclosure.

16 733.5 says that "The use shall not include
17 a drive-through" and this standard's met. There's no
18 plans for a drive-through.

19 733.6, "there shall be no customer
20 entrance in the side or rear of the building that
21 faces a street or alley containing a zoned district
22 bound line for a residence district," and this
23 standard also is not applicable here.

24 The next issue, I think, was one of the
25 key issues, and that involved trash. The basically

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1 negative impacts that can arise from a restaurant next
2 door to neighboring properties, a greater rate of
3 trash.

4 Actually, it says "The use shall be
5 designed and operated so as not to become
6 objectionable to neighboring properties because of
7 noise, sounds, odors, lights, hours of operation or
8 other conditions."

9 I know the others can jump in if they
10 want. This is a key provision, where we heard a lot
11 of testimony on this with respect to would this have
12 an objectionable impact on the neighbors.

13 So we looked at first of all where it's
14 located, and it is on a commercial street, across from
15 an office building. But on the other hand, there are
16 townhouses on either side of this establishment, which
17 are rented for residential.

18 I think this is one aspect we might want
19 to get to later, where we may design conditions to
20 alleviate any possible adverse impacts, such as trash
21 and noise, problems from loading and delivery. We
22 specifically got into those issues.

23 I think with this and lighting, I think
24 that as we get further on in our discussion, and maybe
25 we can do this later, but I think that we will be able

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1 to condition the lighting, the trash pickup, the
2 deliveries, so that this condition can be met. So
3 shall we postpone our specific discussion on those
4 issues until we get to the conditions?

5 MR. MANN: I think we should.

6 MS. MILLER: Yes.

7 MR. MANN: Right, and on the premise that
8 we'll be able to alleviate any of the concerns through
9 the conditions.

10 MS. MILLER: Okay. I think that's good,
11 because we need to get into that a little bit more.

12 733.8, "The use of sufficient off-street
13 parking but not less than that required by 2101.1, to
14 accommodate the needs of patrons and employees." The
15 record indicated that the Applicant didn't anticipate
16 having more than five employees on site at one time,
17 and met the requirements of 2101.1, which wasn't
18 required to have parking.

19 But they're going to have one space in the
20 back that they're going to use for at least one
21 employee, to bring deliveries and things like that.
22 I didn't -- they're also, I think it's about two
23 blocks from the Union Station Metro. They're very
24 close to the Metro, and they're serving a neighborhood
25 and office crowd in the area.

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1 So I didn't think parking seemed to be an
2 issue at all. So I would say that that condition's
3 met.

4 733.9, "The use shall be located and
5 designed so as to create no dangerous or other
6 objectionable traffic conditions." This was a very
7 big issue with respect to, I think primarily
8 deliveries, and whether the trucks could come through
9 the alley system behind the establishment, as was one
10 of the proposed delivery and loading options.

11 At the hearing, we were not sure that this
12 condition could be met or was met. We didn't have
13 enough evidence. That was why we asked for DDOT to
14 weigh in on this, and then the Applicant and the
15 community to respond if they wanted to.

16 We did get a letter from DDOT, which is
17 Exhibit No. 30, and DDOT recommended the alley system
18 in the back for deliveries and loading, and found that
19 there weren't any traffic or safety issues raised by
20 that.

21 So they also said as an alternative, they
22 could put curbside, allow curbside parking on the
23 front. But the ANC actually preferred the alley
24 system, and I believe the Applicant was willing to go
25 with the alley system as well.

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1 In any event, I don't believe that there's
2 any dangerous, objectionable traffic conditions as a
3 result of this application. Anybody else have
4 anything they want to say? We're going to get into
5 those conditions also, because I think that with the
6 conditions, that will ensure that.

7 733.10. "There shall be adequate
8 facilities to allow deliveries to be made and trash to
9 be collected without obstructing a public's right of
10 way, or unreasonably obstructing parking spaces or
11 else a driveway on the site."

12 Again, this also was a question at the
13 hearing that DDOT seems to have put to rest, in my
14 view.

15 773.11. "The Board may impose conditions
16 pertaining to design, screening, writing,
17 soundproofing, off-street parking spaces, signs,
18 method and hours of trash collection, or any other
19 matter necessary to protect adjacent or nearby
20 property."

21 I think that's really where we are right
22 now. I think in this particular case, because this
23 establishment is in between two residential dwellings,
24 that there should be certain conditions to protect
25 them from adverse impacts upon the neighbors.

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1 That's what we were really asking for
2 further information on at the hearing. I think we did
3 get that. We got that with respect to the signage and
4 the lighting and parking delivery, and trash, okay big
5 trash. So I think -- I really want to discuss the
6 conditions, okay.

7 Okay. I'd also like to say that some of
8 our concerns are addressed by the representations by
9 the Applicant in their submissions, and so they don't
10 necessarily need to be put in as conditions. But they
11 will be reflected in the application on file, and in
12 the plans.

13 For instance, the Applicant did submit
14 revised plans, which further show lighting, as we have
15 requested, and signage. Some things that I think we
16 need to specifically say, some things that are
17 reflected in the plans.

18 For instance, we often say and I would
19 suggest we probably do this as a condition number one,
20 that the establishment be constructed as shown on the
21 plans, on the revised plans. The revised plans
22 actually do show lighting fixtures and even the
23 wattage that was addressed.

24 The Office of Planning had requested that
25 the exterior lighting in the front and rear not exceed

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1 100 watts, 1,420 to 1,750 lumens, and that is
2 reflected on the plans.

3 Office of Planning, to which we give great
4 weight, very much so, said that the lights on the
5 exterior of the building shall be cast downward. So
6 I think that we ought to make that a condition, okay.

7 Trash. Trash was a big issue. People,
8 neighbors were concerned that fast food restaurants
9 bring trash. I think certainly -- I think probably
10 all restaurants bring trash, and there are probably
11 different degrees, depending on the volume of traffic
12 and the type of restaurant.

13 I think we need to address this.
14 Applicant represented that the trash would be enclosed
15 in a three-sided brick wall six feet high with an
16 opaque gate. The opaque gate certainly is reflected
17 on the plans.

18 It's represented that they're going to do
19 it and close it that way. We could put it in with a
20 condition or we -- I don't know how we're doing to do
21 it.

22 MR. MANN: I'm not opposed to having it as
23 a condition, but it is reflected in the plans, and it
24 is a requirement that the application indicates is
25 going to be met.

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1 MS. MILLER: Right.

2 MR. MANN: So I don't think it's an
3 absolute necessity. But if the Board believes that
4 will help alleviate any concerns regarding potential
5 impacts, then I'm not opposed to it either. Any other
6 comments on that?

7 MR. MANN: Their latest drawings do
8 indicate a seven foot high new wood-planked gate and
9 fence.

10 MS. MILLER: So, and you're the architects
11 on the Board. Do you think that that's sufficient?

12 MR. MANN: I would think so. I mean that
13 covers the intent of what OP was intending.

14 MS. MILLER: Okay. So we won't need to
15 reiterate that then. Office of Planning was also
16 suggesting that trash be picked up three times a week,
17 and I think we should definitely put that in there.

18 There was a concern also about debris or
19 litter in the front of the property. That's where the
20 customers would be. It's a big carryout walkup, and
21 they were concerned that they might be dropping their
22 coffee cups or whatever.

23 So the Applicant, I believe, represented
24 that any debris or litter found in the front of the
25 property shall be picked up on a regular basis during

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1 the normal hours of operation. I would suggest we put
2 that language in as a condition.

3 MR. MANN: I have no opposition to that.
4 Could we just go --

5 MS. MILLER: Do you want to go back?

6 MR. MANN: Well just briefly, regarding
7 the trash pickup. That's a minimum three times a week
8 for it to be picked up? Is that what it says or --

9 MS. MILLER: The way I read it was picked
10 up three times a week. We can change it to a minimum.

11 MR. MANN: I think that's the intention,
12 right, because they'll --

13 MS. MILLER: They can always do more,
14 though. They could always do more.

15 MR. MANN: Right, okay.

16 MS. MILLER: Okay. Now we get to
17 deliveries and loading. There were two options that
18 were addressed in this case. One was through the
19 alley system in the back behind the establishment, in
20 which there are some homes as well, and then as an
21 alternative, that DDOT dedicate a parking spot in the
22 front of the establishment on the commercial street.

23 The ANC voted on this issue, and preferred
24 the alley system. Great weight's a funny word to use,
25 because you know technically, I was saying that we

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1 don't have to give "great weight," meaning we don't
2 have to address their issue in particularity.

3 But actually their input's very important,
4 and since they prefer that and DDOT is fine with that,
5 and I believe that the Applicant is certainly willing
6 to go either way, that we ought to honor the
7 preference of the ANC and require that the delivery
8 and the loadings be made from the alley system at the
9 back.

10 MR. MANN: But you're suggesting that that
11 be conditioned?

12 MS. MILLER: I do. I think we need to set
13 it, but I think we also need to discuss. There is
14 that other option hanging out there.

15 If for some reason the ANC or the
16 neighborhood later on down the road finds that
17 circumstances have changed, and they'd rather go the
18 other way, maybe we can provide for that option.

19 MR. MANN: Because otherwise, if it's in
20 there as a condition, then the strict application of
21 our order would be that they'd have to come back for
22 a modification to the order if they wanted to change
23 the delivery system?

24 MS. MILLER: Unless we provide otherwise.
25 I mean we could say that deliveries and loadings shall

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1 be made from the alley system at the back of the
2 property, but that the deliveries and loading system
3 may be changed to the curbside space, with the consent
4 of DDOT and the ANC, to allow for the community to
5 make a change without having to come to us.

6 MR. ETHERLY: I would agree to an extent
7 with Mr. Mann's concern, actually strike that. I
8 disagree with Mr. Mann's concern. I think it is
9 important enough to clarify specifically that the
10 deliveries go towards the alley.

11 I think the DDOT report was helpful,
12 because my colleagues will recall, we did have some
13 substantial testimony about concerns with regard to
14 how parking was utilized by other property owners in
15 the back.

16 So specifically from the standpoint of
17 leasing by office goers for some of the adjacent
18 office building properties, the DDOT report seemed to
19 put that to rest. It didn't address it specifically,
20 but didn't identify any major concerns.

21 However, I think the ANC's concerns were
22 well-taken about trying to direct any commercial or
23 delivery traffic from 2nd Street, given the nature of
24 that particular thoroughfare.

25 So I'd rather err on the side of being

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1 fairly definitive in that particular issue and
2 condition it. If need be, if for whatever reason
3 there is some practical difficulty in terms of the
4 application of that, they can come back for a
5 modification for another special exception.

6 But I'd feel strongly enough that I think
7 it doesn't need to be conditioned.

8 MS. MILLER: I think it needs to be
9 conditioned, because this is a very, very big issue,
10 and it can create a lot of consternation. I think it
11 needs to be clear and specific.

12 My only question is, since DDOT had no
13 problem with either one, whether they should have to
14 come back to us if they find the other is preferable
15 later down the road.

16 MR. ETHERLY: Yes. I'd take the old
17 baseball analogy and kind of give the tie to the
18 runner, which would be to ANC in this particular
19 instance. Because in their original report, the ANC
20 did prefer -- did express a preference for directing
21 delivery traffic away from 2nd Street.

22 MS. MILLER: That's fine. Any other
23 comments?

24 MR. TURNBULL: Madam Chair, I would agree.
25 I would condition it for the alley delivery. I guess

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1 my only other comment would be that if there's any way
2 to make it easier in the future, if the ANC and the
3 community wanted to change it and come back without
4 going through another process like this, is I don't
5 know if we could amend it somehow to allow that to
6 happen, or do they have to come back and resubmit and
7 go through it all.

8 I would condition it, but I would -- if
9 there's some way to make it easier to make the change,
10 I don't think we would be objectionable to making the
11 change for the front, if that's at some point what
12 everyone agreed to. But I would definitely condition
13 it.

14 MS. MILLER: Okay.

15 MR. ETHERLY: I'll just note, as we're
16 kind of discussing this particular issue, perhaps the
17 reason why I'm not so -- what's the word I'm looking
18 for -- the reason why I'm not concerned about them
19 coming back is, of course, we heard quite a bit of
20 testimony from some of the adjacent residential
21 property owners about concerns.

22 Although we are talking a C-2A district,
23 given the proximity of the residential district in
24 this particular instance, I think it might not
25 necessarily be such a bad idea, if at some particular

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1 point in the future this had to come back for whatever
2 reason.

3 I'm not suggesting necessarily a time
4 limitation on the special exception itself. But if
5 there are difficulties that arise from the delivery
6 aspect of this, in particular as it relates to the
7 residential component of this particular alley and
8 street network, it might not be a bad idea for us to
9 take a look at this again.

10 As the chair noted at the beginning or the
11 outset of this case, this particular community, this
12 ANC and others in this particular area are definitely
13 not strangers to this issue, which is probably going
14 to get some attention from the Zoning Commission at
15 some point in the future.

16 So I would rather err on the side of
17 saying hey, if has to show back up again, traffic is
18 perhaps and in particular delivery truck traffic is
19 probably one of those reasons why it should come back
20 again.

21 MS. MILLER: The only thing is, I guess,
22 I mean first of all, this is a transitional affair.
23 I mean you can read that both ways. I mean I hear
24 what you're saying. It's like it's transitional and
25 fast food restaurants, you know, whatever that

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1 encompasses are an issue that seems to be coming
2 before the board now, that people are concerned about,
3 and they're not sure how it's going to work out.

4 But on the other hand, I guess this is for
5 me, if DDOT and the ANC were to agree, and the
6 Applicant, I'm not sure why they'd have to come back
7 to us for that. But -- well, we have --

8 MR. ETHERLY: You're not going to convince
9 me on that one, unfortunately.

10 MS. MILLER: Okay, all right. You know,
11 no one had specifically asked for that though either.

12 MR. MANN: Well, I'm not certain if my
13 position on this is clear or not. I mean I'm willing
14 to accept your modified condition that they have to do
15 it in the rear of the building, but with the consent
16 of those two, that the ANC and DDOT, that it's fine
17 and it doesn't have to come back to us.

18 I understand Mr. Etherly's concerns, but
19 I just don't know that -- I don't want to impede the
20 ability to have some flexibility, without having to go
21 through the often prolonged process of coming back to
22 BZA for a change that has essentially been sort of
23 worked out.

24 MR. ETHERLY: Well, I'm comfortable with
25 trying to structure some language that could work. I

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1 don't necessarily think it has been worked out, but I
2 think we have a lot of gray area here on both sides,
3 both the ANC.

4 I think DDOT's report is not necessarily
5 non-committal, but it's not the strongest report out
6 there in terms of clarity about any concerns on 2nd
7 Street.

8 I mean they don't necessarily say it, but
9 my concern is again, having had some testimony on
10 record about some of the parking practices that are in
11 existence in that back alley network, granted DDOT
12 says very specifically in their report that they do
13 not see any concerns with regard to the alley, I'm
14 comfortable if we can work out some language that
15 provides for an agreement between the ANC and DDOT,
16 such that they don't need to come back here.

17 I mean that's fine. That still gets to
18 the spirit of what my concern is about that back
19 alley.

20 MS. MILLER: Exactly. I mean it just
21 leaves us out of the equation, because I think they've
22 already briefed us enough on it, and that's the
23 direction we would go in in any event, if DDOT and the
24 ANC all agreed.

25 So language. Well, this is going to be a

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1 full order, where we can work out the language more
2 specifically. But I think that we have the intent
3 covered, that it would only be changed with the
4 consent of DDOT and the ANC.

5 Okay. Now DDOT also recommended setting
6 a period of time for the loading. Loading, it looks
7 to me by standard-size boxed trucks. First of all,
8 they talked about the size of trucks in this report,
9 Exhibit 30, and the times, for either place.

10 DDOT says for either curbside loadings or
11 rear delivery, DDOT recommends limitations to both
12 delivery times and truck size. So therefore I think
13 that we ought to put that in as a condition as well,
14 what those would be.

15 They recommend, they say "For example, an
16 unloading/loading period of 8:00 a.m. to 12:00 p.m."
17 Just taking the time, with respect to the standard
18 size box trucks, we should look at the time, whether
19 that is a good time, whether we go with DDOT or what
20 do we want to do.

21 And I was surprised that the Applicant
22 didn't look like either the Applicant or the ANC
23 addressed the time, which seemed like an important
24 issue to me. What time should the truck start coming
25 into that alley. So that leaves us and DDOT.

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1 Also, though, I think DDOT's talking about
2 trucks and not a personal vehicle. If I recall,
3 correct me if I'm wrong, I think that this
4 establishment wanted to start at 7:00 in the morning
5 and that they wanted to bring in baked goods before
6 that, I think even starting at six.

7 So my reaction is that, because there were
8 no other comments than DDOT's, that we ought to follow
9 their guidance on the 8:00 a.m. to 12:00 p.m. for
10 trucks, but that the Applicant be able to bring in
11 their baked goods or whatever in their personal
12 vehicles, that they have that one spot behind the
13 building.

14 I don't know. What are other people's
15 thoughts on that?

16 MR. MANN: I agree. I think that we
17 should take DDOT's guidance on that in regard to the
18 box trucks, and either -- well, since it's going to be
19 a full order -- I'm not quite certain; presumably a
20 full order -- I'm not quite certain whether or not we
21 just remain silent on the use of personal vehicles for
22 other deliveries, or if you want to specifically call
23 that out.

24 MS. MILLER: Well, you know, when in
25 doubt, I would say call it out, because sometimes

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1 these conditions can be the subject of dispute in the
2 communities if they're not specifically clear, when we
3 know what we really mean.

4 MR. MANN: I'm happy to support that.

5 MR. ETHERLY: I would have no objection.
6 So essentially for vehicles that are smaller than the
7 standard-size box trucks, there would not necessarily
8 be a restriction.

9 MS. MILLER: Well, we should discuss that,
10 because I don't know what that means exactly. But I
11 do know that there was testimony at the hearing about
12 another restaurant that used its own personal vehicle
13 to bring in food and other goods.

14 So in my mind, it's personal vehicles. I
15 don't know if there's some other kind of vehicle that
16 would be smaller than a truck that might be
17 objectionable. So that's why I'm leaning towards
18 personal vehicle, but like it would be a van or
19 something like that would be okay.

20 MR. ETHERLY: I mean perhaps -- I agree
21 with the direction in which DDOT is moving with regard
22 to the standard size box trucks, and again given some
23 of the testimony that we heard about that alley
24 network, when it's shall we say in full occupancy
25 mode, it's probably going to be critical to have some

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1 relief from the truck traffic for all those vehicles
2 that are back there parking.

3 With respect to other vehicles, I think
4 the flip side of that is not only an alley impact
5 issue but also obviously a quality of life, if you
6 will, issue, from the standpoint of other property
7 owners, and in particular the residential property
8 owners.

9 Perhaps there's a broader range of timing
10 there that we could be specific with. I don't know if
11 it would be an 8 to 5 or an 8 to 6 type of
12 prohibition, something that perhaps tracks what
13 regular loading zone hours are for other vehicles
14 smaller than the standard-sized box trucks.

15 I mean I'd be amenable to something like
16 that, if there's a need to speak to it specifically.
17 So the condition would be something along the lines of
18 what DDOT has used in terms of their language, an
19 unloading/loading period of 8:00 a.m. to 12:00 p.m.
20 for standard size box trucks period.

21 Then perhaps it's a separate condition or
22 it's appended onto this condition. For deliveries and
23 vehicles smaller than standard-size box trucks, the
24 unloading/loading period shall be 8 to 5 or 8 to 6 or
25 something like that.

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1 I'd be amenable to something along those
2 lines. The only reason why perhaps I'm a little more
3 open to a broader loading period for the smaller
4 vehicles is I think given what we heard in terms of
5 testimony on the record, smaller vehicles, and in
6 particular regular passenger cars, four-door, two-door
7 coupes whatever, would not necessarily have as much
8 difficulty negotiating that alley network when it's
9 parked at its full capacity.

10 MS. MILLER: Okay. Where I'm on that is
11 we didn't hear -- we didn't get any feedback on this
12 from the community or the Applicant. We didn't get
13 much specifics on DDOT for other vehicles. We didn't
14 have any testimony.

15 So I guess I would just be inclined to
16 limit the loading and deliveries for the box truck to
17 between 8:00 a.m. and 12:00 p.m., and then just not
18 make it applicable to deliveries in personal vehicles.

19 Because I can't even imagine what other
20 vehicle are we talking about. If we can't imagine it,
21 then we shouldn't be addressing it maybe. We don't
22 have any evidence on other vehicles.

23 MR. ETHERLY: Well again, what I'm
24 struggling with is some of the testimony from some
25 neighbors, neighboring property owners residential,

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1 about how that alley is used on a daily basis. Again,
2 DDOT didn't speak to it, so to an extent we only have
3 perhaps one side of that story.

4 But I wouldn't want to inadvertently
5 create a loophole, such that you have a caravan of
6 personal vehicles that are making deliveries, you
7 know, throughout the entire day and night.

8 MR. MANN: Yes, but we also heard
9 testimony that this is a pretty low volume operation,
10 and that they didn't anticipate very many deliveries
11 per week, let alone per day. So I don't know that
12 we've heard the necessity to limit the deliveries by
13 anything other than box trucks.

14 MR. ETHERLY: True, I would agree with
15 that, but in the context of the alley, recall that we
16 talked about a veterinary supply, which is nearby. We
17 talked about Banducci's, which also receives delivery
18 and trash traffic in the rear, as I recall.

19 So the incremental impact that's added by
20 this particular operation while in and of itself might
21 be minuscule, I think as part of that overall context,
22 I would want to err on the side of being perhaps a
23 little more bearish, if you will, on some type of
24 broader but nevertheless specific restriction in terms
25 of other delivery traffic.

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1 MS. MILLER: I think the testimony was
2 primarily addressed to trucks, and how they kind of
3 maneuver back there, and how they would block other
4 driveways and things like that.

5 MR. ETHERLY: Because you have a lot of
6 other vehicles that are parking back there on a
7 regular basis as part of the office traffic.

8 MS. MILLER: Okay. Maybe we need to be
9 more specific, that any delivery would have unload at
10 that part. It would be limited to the personal
11 vehicle unloading at their parking spot behind their
12 rear.

13 I mean I would not want to open the door
14 -
15 - I don't think it would anyway -- to all these cars
16 getting deliveries and then queuing up in the back or
17 anything like that.

18 I think the point is that they have one
19 parking spot; they should be able to use it and not
20 have --

21 MR. ETHERLY: To utilize it.

22 MS. MILLER: I don't think we want to have
23 a situation where --

24 MR. ETHERLY: But the question is when?
25 The question for me is when?

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1 MS. MILLER: When? Well, I mean as their
2 own driver of their car, they really should have the
3 freedom to go back and forth to their parking space
4 whenever they want, I would think.

5 I don't think we want to go there to limit
6 that, and I think also we don't want people peering
7 into the cars, to see whether they're delivering or
8 not delivering, you know what I mean?

9 MR. ETHERLY: I mean I understand. I
10 understand exactly.

11 MS. MILLER: I mean they have that parking
12 spot. Why can't they use it?

13 MR. ETHERLY: I mean let's just be very
14 clear. I'm not trying to be a hard butt for no
15 reason. We're talking about a commercial operation
16 here.

17 Granted, there was nothing -- there was
18 nothing in the plan presented by the Applicant to
19 suggest, nor am I reading into it, that there's going
20 to be any kind of abuse or overburdening here.

21 But as I recall the testimony describing
22 the overall context of the alley, I'm endeavoring to
23 err on the side of being stricter rather than looser,
24 just to ensure that we don't have any nightmare
25 scenarios.

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1 But to expedite our conversation, I'm more
2 than comfortable with -- I'm happy having stated my
3 position on the record for this particular instance.
4 But I'm not going to stand in the way of us moving
5 forward and fashioning an appropriate condition that
6 works.

7 MS. MILLER: Well, you know. Maybe we can
8 address your concern without going beyond the
9 evidence. For instance, maybe we can limit deliveries
10 to, you know, one personal vehicle outside of those
11 hours that can use that one parking spot.

12 Because I think that it could mean
13 anything. At 9:00 at night, they could run out of
14 catsup or something, and somebody's going to go run
15 and do a delivery to pick that up.

16 We don't want to preclude that. Or at six
17 in the morning, when the chef comes to work or the
18 baker brings the baked goods, we don't want to
19 necessarily preclude that. So I think --

20 MR. ETHERLY: I understand that. But I
21 just want to be clear that if Safeway runs out of
22 catsup at 8:00, Safeway can't run and have a huge
23 truck drive up.

24 MS. MILLER: Not a truck, not at truck.
25 I think that that's what we can --

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1 MR. ETHERLY: Or another delivery vehicle
2 for that matter.

3 MS. MILLER: Well, are you comfortable
4 with the personal vehicle use?

5 MR. ETHERLY: I think it's a gray area,
6 but I'm happy to move on.

7 MS. MILLER: Okay. So, okay. What is the
8 suggestion, and these get fine-tuned in the writing.
9 But it would not applicable to personal vehicle using
10 the dedicated parking spot behind the establishment.
11 Okay.

12 MR. MANN: Madam Chair, I'm in agreement
13 with that. I think my only, and I was trying to
14 structure some language.

15 My only comment was deliveries by personal
16 vehicles are excluded by this requirement, provided
17 they do not interfere with the tranquility of the
18 neighborhood. I don't know how you cover that,
19 though.

20 MS. MILLER: I think that's our intent,
21 but we have to fashion a condition That the community
22 and everybody can enforce. So we'll work on that --

23 MR. MANN: Well, are you going to have a
24 time? Are you looking at a time that personal
25 vehicles can -- or is that open for any time?

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1 MS. MILLER: Well see, I think it should
2 be open. They have their parking spot like the
3 townhouses next to them, who can -- they can run to
4 the grocery store at any hour, you know.

5 So I think this is a small operation.
6 They've got their one spot for one vehicle. I didn't
7 hear a lot of testimony that that was going to create
8 great adverse impacts. It was more the trucks.

9 MR. MANN: Okay. I can go along with
10 that.

11 MR. ETHERLY: And just to kind of close my
12 two cents on that particular point, I agree with you
13 in part, but I think part of the challenge is looking
14 at the fundamentally different nature of a commercial
15 operation versus a residential operation.

16 Granted, as a home owner, as a residential
17 property owner, if I run out of catsup, I can go to a
18 24 hour store and refill that need.

19 But the impact of that versus a commercial
20 operation that might -- albeit a small one, I think
21 that we just treat those and I think the zoning
22 regulations endeavor to treat those in fundamentally
23 different ways.

24 But I'm comfortable with the language that
25 we've parsed out. I just wanted to be fairly clear on

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1 kind of why I was coming at this the way I was coming
2 at it. So I'm comfortable moving forward, Madam
3 Chair.

4 MS. MILLER: Okay, and I just want to add.
5 I mean we have to pull from the evidence that we get,
6 and there was evidence, there was testimony at the
7 hearing about another restaurateur who used his van,
8 and brings it to his parking spot, as opposed to a
9 truck, and that there wasn't a problem with that.

10 I understand what you're saying about you
11 never know incrementally maybe two of them, it's going
12 to be a problem. We don't really have that evidence
13 here. But I understand the concern, and I think it
14 would be good if we do limit it to that parking spot.
15 Okay, anybody else have comments on that?

16 (No response.)

17 MS. MILLER: Mr. Turnbull, you had a
18 concern with respect originally, and we may have gone
19 by this already. But I just want to make sure that
20 with respect to the revised plans, that you're
21 satisfied with the lighting, that it would not have an
22 adverse impact on the neighbors. Specifically with
23 our language, saying that it has to be cast downward?

24 MR. TURNBULL: The drawings would seem to
25 indicate a hooded fixture at the rear of the building.

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1 The wattage and the lumens are by the OP standards.
2 It does not specifically call out that it is -- the
3 drawing would appear to be that type of a fixture. It
4 doesn't clearly call out that it is a downlit fixture.

5 But it appears that what they're showing
6 on the elevation is a fixture that has a hood on it
7 that is directing the light downward, though. I don't
8 know if we want to clarify that, just to reinforce it.

9 MS. MILLER: Well, I think we did talk
10 about a condition that says the lights on the exterior
11 of the building shall be cast downward. So if
12 everything else is okay, I just wanted to double-check
13 with you. Okay.

14 MR. TURNBULL: That's fine.

15 MS. MILLER: Does anybody else have any
16 proposed, any other proposed conditions?

17 (No response.)

18 MS. MILLER: I think at some point, the
19 question of a term might have come up. But I would
20 not suggest that -- I don't think that we have ever
21 done that with respect to a restaurant, only with
22 respect to like child development centers and other
23 schools.

24 Okay. Then at this point, do we have a
25 motion? I'll make a motion. I would move to approve

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1 Application No. 17501 of Cynthia A. Jones, on behalf
2 of Jones and Araque, LLC, pursuant to 11 DCMR Section
3 3104.1, for a special exception to establish a fast
4 food restaurant under Section 733 in the C-2A district
5 at premises 605 2nd Street, N.E. Do I have a second?

6 MR. MANN: Second, and I guess under the
7 deliberation, we can note that that will incorporate
8 all the conditions that we just crafted.

9 MS. MILLER: I meant to say as
10 conditioned, yes.

11 MR. MANN: Sure.

12 MS. MILLER: Are there any other comments?

13 (No response.)

14 MS. MILLER: I just want to see if we
15 covered everything. The ANC did submit two reports.
16 I just want to just go back to that for one second.
17 They opposed the application for a special exception
18 by a vote of 3-2-2. That's Exhibit No. 22, reflecting
19 a split certainly in the community or certainly among
20 the ANC.

21 But the majority opposed it, and then
22 their second ANC report, they supported the delivery
23 system in the hourly, and they didn't change their
24 vote on the application in general. But they did meet
25 the requirements for great weight, but we paid great

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1 attention to their point of view in any event.

2 I think that we've gone through the Office
3 of Planning's conditions, and given them their great
4 weight. So if there are no other comments, all those
5 in favor say aye?

6 (Chorus of ayes.)

7 MS. MILLER: All those opposed?

8 (No response.)

9 MS. MILLER: All those abstaining?

10 (No response.)

11 MS. MILLER: Mr. Moy, do you recall the
12 vote?

13 MR. MOY: Yes, Madam Chair. The staff
14 would record the vote as 4 to 0 to 1. This is on the
15 motion of Ms. Miller, seconded by Mr. Mann, to approve
16 the application as conditioned. In support of the
17 motion, Mr. Etherly and Mr. Turnbull, Mr. Griffis not
18 participating on the case.

19 Do you need to go through the conditions,
20 or we said this would be a full order, so the staff
21 will be working with the Board on this.

22 MS. MILLER: Right. I don't think we need
23 to go through the conditions again. I think we're
24 clear on that. Yes. Thank you. Are there any other
25 items for the public meeting?

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1 MR. MOY: No ma'am. That completes the
2 special public meeting.

3 MS. MILLER: Okay. Then the public
4 meeting is adjourned, and Mr. Griffis will be coming
5 back to open the public hearing. Thank you.

6 (Whereupon, at 10:49 a.m., the special
7 public meeting was adjourned.)

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